

## **REMARKS**

Claims 1-21 and 23-44 are now pending in the application, with Claim 22 being cancelled herein. Of these pending claims, Claims 1-8, 16-21, 24, 25, 27-31, 35-38 and 40-44 stand rejected, Claims 9-12, 23, 26 and 32-34 are objected to, and Claims 13-15 and 39 have been withdrawn. Minor non-narrowing amendments have been made to the claims to simply overcome the rejections of the claims under 35 U.S.C. § 112. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **REJECTIONS UNDER 35 U.S.C. § 102 & §103**

Claims 1-6, 8, 16-21, 24, 25, 27-29, 35, 36, 38, and 40-44 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kohrs, et al. (U.S. Pat. No. 5,897,593).

The Examiner's attention is respectfully directed to amended independent Claim 1, which includes the limitation that the implantation system includes "a staple configured to be fixed to the implant," the staple further being configured to fixably engage soft tissue. Similarly, independent method Claim 36 has been amended to include the limitation "coupling the soft tissue to the implant." Applicants note none of the references disclose this limitation.

In the [second interpretation] portion of the Office Action (page 4), of the claim rejections under 35 U.S.C. §102, the Office Action characterized the Kohrs, et al. reference as disclosing a staple. In doing so, the Office Action cited Figure 14 as showing a fastener having a locking surface (116B) to engage the surface (44) of the implant. Applicants respectfully traverse this characterization. In this regard, the

Examiner's attention is directed to the descriptions of Figures 14, 15 and 16 of the Kohrs reference. Column 6, lines 38-60, of the Kohrs reference describes the structure cited by the Examiner as a driver (110) for use in placing an implant 20 in a prepared space, and not a staple as claimed. Applicants note that this structure is not a fastener to be fixably coupled to the implant. Furthermore, nothing in the Kohrs reference discloses or suggests the use of the drive structure depicted in Figures 14-16 to couple soft tissue to the implant.

Claims 7, 30, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kohrs, et al. (U.S. Pat. No. 5,897,593) in view of Michelson (U.S. Pat. No. 6,241,770). Claim 37 stands rejected under 37 U.S.C. § 103(a) as being unpatentable over Kohrs, et al. in view of Bressman, et al. (U.S. Pat. No. 5,620,323). With respect to these rejections, Applicants note that the structure 11 shown in the Michelson reference similarly is not configured to fixably engage soft tissue to the implant.

The Examiner's attention is directed to amended independent Claim 20. Independent Claim 20 has been amended to include the limitations of Claim 22, which has been deemed as allowable. As such, Applicants respectfully submit that Claims 20, 21 and 23-31 are now in condition for allowance.

#### **ALLOWABLE SUBJECT MATTER**

The Examiner states that Claims 9-12, 22, 23, 26, and 32-34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening


claims. Accordingly, Applicants have non-narrowingly amended Claims 9 and 32 to include the limitations of the base claim and any intervening claims. Therefore, Claims 9-12 and 32-34 should also now be in condition for allowance.

### **CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: April 17, 2006

By:   
Richard W. Warner  
Reg. No. 38,043

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600

RWAR/CAE/smb